

1 UNITED STATES BANKRUPTCY COURT
 2 NORTHERN DISTRICT OF CALIFORNIA

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4 In Re:) Case No. 19-30088
 5 PG&E CORPORATION AND PACIFIC) Chapter 11
 6 GAS AND ELECTRIC COMPANY) San Jose, California
 7 Debtor.) Tuesday, April 9, 2024
) 10:00 AM

8 MOTION TO DETERMINE IF THE
 9 TRUSTEE'S MODIFICATION OF THE
 10 CLAIM RESOLUTION PROCEDURE
 11 WAS APPROVED BY BANKRUPTCY
 12 COURT AND IF NOT SO APPROVED
 13 TO GRANT REQUESTED RELIEF
 14 UNDER 11 U.S.C. SECTION
 15 105(A) AND SECTION 1142(A)
 16 B.L.R. SECTION 9014-1(B)(3)
 17 FILED BY SAYEGH BROTHERS,
 18 INC. [14319]

13 TRANSCRIPT OF PROCEEDINGS
 14 BEFORE THE HONORABLE DENNIS MONTALI
 15 UNITED STATES BANKRUPTCY JUDGE

16 APPEARANCES (All present by video or telephone):

17 For Sayegh Brothers, Inc.: MICHAEL R.. BUSH, ESQ.
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1 SAN JOSE, CALIFORNIA, TUESDAY, APRIL 9, 2024, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session, the Honorable
5 Dennis Montali presiding. Calling the matter of PG&E
6 Corporation.

7 THE COURT: All right. Good morning. Appearances,
8 please.

9 You're muted, Counsel.

10 You're still --

11 MS. SIEGER-GRIMM: Yeah.

12 THE COURT: Okay.

13 MS. SIEGER-GRIMM: No, it was my screen slid to the
14 right, and I couldn't get to the unmute. Susan Sieger-Grimm of
15 Brown Rudnick for the fire victim trustee.

16 THE COURT: Morning.

17 THE CLERK: Your Honor, I'm attempting to move Mr.
18 Bush in. He needs to accept the invitation to join.

19 THE COURT: Well, if he doesn't accept our invitation,
20 I guess we have to kick him out, right?

21 THE CLERK: Well, he declined to be promoted as
22 panelist.

23 THE COURT: Mr. Bush, if you wish to be heard, you
24 have to accept our invitation.

25 He's got his hand up.

1 THE CLERK: Yes. And I bring him in, Your Honor, and
2 then he declines. I'm not sure what's happening.

3 THE COURT: Well, it looks like -- now his hand isn't
4 up. Oh, there he is. Mr. Bush.

5 THE CLERK: Okay. I believe he's joining now.

6 THE COURT: Okay. All right. Good morning, Mr. Bush.
7 You need to turn on your microphone and your camera, unless you
8 would rather stay off the camera.

9 If you can hear me, your microphone is muted. There
10 you go. And now, can you hear me?

11 MR. BUSH: Well, they're not connecting with me.

12 THE COURT: I can hear you now. Say something again.

13 MR. BUSH: (Indiscernible) now?

14 THE COURT: Say something. Just state your
15 appearance, Mr. Bush.

16 MR. BUSH: Mike Bush from Zink & Lenzi law firm
17 representing Sayegh Brothers.

18 THE COURT: Okay. Do you want to leave your camera
19 off? Oh, there you go. Okay.

20 All right. Before we start with the argument, Ms.
21 Grimm, I want to just clarify one thing. There's a statement
22 made by Mr. Molton that has nothing to do with the issue before
23 me. It has to do with just with the state of affairs with the
24 trust generally. And the statement is made that as of March
25 14th, based upon the determinations, the awards have been 19.24

1 billion in claims. And that means more than eleven million to
2 be distributed. Comparing 11 to 19.24 is about fifty-seven
3 percent. Isn't it correct that the estimated distribution is
4 about to get up to sixty-six or sixty-seven percent?

5 MS. SIEGER-GRIMM: Yes, Your Honor. To date, there
6 has been 11.27 billion dollars distributed -- a

7 THE COURT: Okay.

8 MS. SIEGER-GRIMM: -- and a little more than nineteen
9 billion dollars awarded. Currently, it's at a sixty-percent
10 pro rata rate. And the trustee has announced that as of March
11 25th, the pro rata rate will be increased to sixty-six percent.

12 THE COURT: Yeah, that's what I call the sixty-six.
13 Am I correct that -- the trustee's due for an annual report as
14 of March 31; isn't that right?

15 MS. SIEGER-GRIMM: Yes. I mean, and --

16 THE COURT: Okay. So should --

17 MS. SIEGER-GRIMM: Yeah.

18 THE COURT: -- we expect that soon?

19 MS. SIEGER-GRIMM: Yes.

20 THE COURT: Okay.

21 MS. SIEGER-GRIMM: I believe that it falls on a
22 weekend, and we'll file the Friday before, I believe.

23 THE COURT: Well, we're past it already, but it
24 doesn't matter. I'm not waiting. Mr. Bush has nothing to do
25 with the specifics of your issue. And just because of

1 something that was said in the trustee's brief that I just
2 wanted to get an update on it.

3 So back to the matter that you've presented for your
4 client, I assume you want to reserve a portion of your argument
5 for rebuttal, correct?

6 MR. BUSH: Correct.

7 THE COURT: How much time?

8 MR. BUSH: Well, I've written out about ten minutes
9 for the first part, so that would leave about five.

10 THE COURT: Okay. Well, go ahead. Please begin.

11 MR. BUSH: Okay.

12 THE COURT: Thank you.

13 MR. BUSH: This motion was filed after the appeal
14 simply because it was at the appeal that I learned for the
15 first time that the procedures used by the trust, which were
16 contrary to California law, were approved by this bankruptcy
17 court, or at least that's what the neutral stated at the
18 opening of the hearing. I was kind of caught off by surprise
19 by such an idea, and I had never seen any proof that you had
20 approved any change to the claims resolution procedure or
21 anything that came out of the confirmation order.

22 Now, I've been involved in about four other PG&E fire
23 cases, and I knew that equipment failure meant liability under
24 inverse condemnation for property damage. So I knew that was
25 possible. The client I represent was satisfied with his

1 insurance payment for the structure damage and only wanted the
2 loss rental income. I thought it was straightforward and
3 answered the question on the questionnaire that applied.
4 Submitted the calculations that were done by a forensic expert
5 that capitalized the income by way of rents. The claim was
6 filed on the 24th of November in 2020, and at that time, the
7 BIL did not exist.

8 A year and a half later, the trust made a kind of
9 shocking determination using a method not accepted by the
10 courts in California. And then at the bottom of it, the bottom
11 of the opinion says attorneys' fees, costs, and prejudgment
12 interest related to inverse condemnation of property are --

13 THE COURT: You're freezing up there. You got to --
14 your screen is frozen.

15 MR. BUSH: -- not available absent a compensable claim
16 for property damage. Okay. So I filed --

17 THE COURT: Well, I know from your papers, you're
18 quite familiar with my decision on the inverse condemnation.
19 The Lyndon case or -- sorry, I'm pronouncing it incorrectly.
20 The case that you rely on, that's a traditional condemnation
21 case, not an inverse condemnation case, right?

22 MR. BUSH: Right.

23 THE COURT: Well, I mean, do you have any -- is there
24 any case law that you cited, I don't think, that cites that,
25 that says on an inverse condemnation where liability is strict

1 based upon the nature of the cause of the problem that it
2 extends and covers loss income? In other worse, the case
3 doesn't say -- the case is not an inverse condemnation. So my
4 question is, leaving aside whether the trust could or couldn't
5 change, what you call a change, the question is whether there
6 was even a basis to apply a damage for loss rental income.

7 So I'll repeat my question. Is there any case you
8 have in mind that applies the inverse condemnation rule and
9 extends the damage to lost income?

10 MR. BUSH: No.

11 THE COURT: Well, so it would have to be -- whether
12 the trust went off on its own or not, it's forging new law,
13 isn't it?

14 MR. BUSH: No.

15 THE COURT: Well, it is. I mean, it hasn't been done
16 before.

17 MR. BUSH: In the cases that talk about it under
18 eminent domain, they also referenced that this applies to
19 inverse condemnation.

20 THE COURT: Well, I understand that. But here, we had
21 a situation where the statute may apply, but it's never
22 applied. And so at least in my experience in this case, I was
23 asked and the utility conceded liability for real property
24 damage. That was fundamental to my determination and is
25 consistent with my understanding of California law. And I

1 might say, I don't know what went into the minds of the brains
2 of the experts at PG&E, but they accepted a liability for
3 property damage. But there was never any discussion, at least
4 to my knowledge, about lost income as a variation.

5 But anyway, that's just backing. Go ahead and make
6 your pitch.

7 MR. BUSH: Okay. Well, as I've said before though,
8 lost income in the way of rents is a property damage. I mean,
9 that is what eminent domain says. So okay. I'll get back to
10 what I was saying.

11 So I requested reconsideration, and I argued that
12 under California law, a leasehold is an interest in property.
13 That was the Lynbar case.

14 THE COURT: Right. Lynbar. I had mispronounced it a
15 moment ago.

16 MR. BUSH: Right.

17 THE COURT: Yes. Right.

18 MR. BUSH: And it was terminated by law the measure of
19 damage would be inverse condemnation. This is what the
20 argument was in that request. This was the Constitutional
21 requirement under California law, requiring procedures of
22 California eminent domain. Trust not following California law
23 was not unusual in this situation. I had other instances where
24 the trust didn't follow California law, and they usually got
25 straightened out by just talking to the claims administrator.

1 A decision on the reconsideration was made on March
2 3rd, and that's Exhibit E. It was the same result. No
3 reference to California law or the Constitutional requirement.
4 Now, I was kind of confused by this result and contacted
5 various people involved with the trust. I asked the claims
6 administrator and Cathy Yanni, and they said that all claims
7 have to be we have to apply the trust agreement, the CRP, and
8 the eligibility of the BIL to all claims.

9 So this was added. I asked Mr. Molton if he could
10 explain why the trust was doing this. He didn't answer. I
11 asked Mr. Skikos. He didn't answer. I asked the TOC --

12 THE COURT: Well, the TOC and the PICOs (phonetic),
13 they were all past history. Essentially, their terms are up.
14 They had no legal role. They could give you their opinion, but
15 even their opinions would have no bearing because they had no
16 standing. They were strangers.

17 I mean, it seemed to me Ms. Yanni was the decision
18 maker at the trust or counsel and the opinions of all those
19 other people, whether they might have been persuasive or not,
20 it probably wouldn't have been dispositive. That's all I'm --
21 I'm not criticizing you for saying it. I'm just saying they
22 wouldn't be a solution.

23 MR. BUSH: Well, I thought the trust oversight
24 committee was constantly involved and available during this
25 process.

1 THE COURT: I may have misunderstood you. TOC, yes.
2 Not TCC so --

3 MR. BUSH: Right. Yes, I know the -- yeah.

4 THE COURT: I'll stand corrected on that.

5 MR. BUSH: I'm sorry. I meant to say TOC, if I
6 didn't.

7 THE COURT: You may have. I may have misunderstood
8 you. Okay.

9 MR. BUSH: So I asked the TOC if they could explain
10 why the trust is not following California law. And at the
11 bottom of that letter, I said, look, if I've got this wrong,
12 tell me what the deal is so I'm not wasting everybody's time.
13 I didn't get -- I didn't get an answer. I didn't get an answer
14 from any of the people I asked. And I had told them that
15 there's an appeal coming up I've got to deal with.

16 So I get no answer. So I had to do the appeal. And I
17 knew that the appeal was something I could not seek any further
18 relief from. I knew that. But when the hearing officer said
19 that the procedures were approved by the bankruptcy court --
20 these are the procedures I'm saying are wrong -- I thought,
21 well, maybe there's something I can raise in bankruptcy court,
22 especially since the hearing officer didn't even respond to my
23 request to tell me what the procedures he was referring to.

24 I told David Molton that I was going to pursue the
25 issue of whether or not the Court approved of these procedures

1 because I didn't think it happened. And therefore it would
2 have violated the confirmation order if affected the CRP, which
3 of course it did because it eliminates California law. It took
4 me quite a while to -- I'm not a bankruptcy lawyer, so I had to
5 learn bankruptcy law, and I had to read all of the proceedings
6 that -- my God, you were involved in a lot of proceedings.

7 THE COURT: And I still am.

8 MR. BUSH: Yeah, I could just -- Well, I got to say
9 this though. Your staff must really be good. It looked like
10 you were getting motions every ten minutes for a while.

11 Anyway --

12 MR. BUSH: We had the A team. Mr. Bush, I keep the A
13 team on board for the PG&E case. Absolutely.

14 MR. BUSH: Yeah.

15 THE COURT: All three of them. It's a thin staff,
16 believe me.

17 MR. BUSH: I think they are magnificent.

18 THE COURT: So do I.

19 MR. BUSH: Okay. So it took me a while to figure it
20 out and familiarize myself with all this stuff. And during
21 that time, I did not find any reference to the bankruptcy court
22 approving the BIL procedures. Something is missing. It's just
23 not there.

24 And now, with the objection filed by Mr. Molton, I see
25 the missing link. Starting at paragraph 27 of the

1 objections --

2 THE COURT: Yeah.

3 MR. BUSH: -- Mr. Molton argues that the reason the
4 trust denied the Constitutional right to just compensation is
5 because the structure damage was paid for by the insurance
6 company. Therefore, the trust did not have to pay that part.
7 And therefore, inverse condemnation would not apply because the
8 trust is not paying for property damage. So that kind of
9 explained what I said earlier was at the bottom of these pages
10 that said you have to have some compensable damage. I thought
11 they were referring to -- well, the property interest, under
12 California, a leasehold is a property. And that's what I
13 thought they were referring to.

14 But then when I looked at the first page of the BIL,
15 which in my thing, it's Exhibit A, and in the third paragraph,
16 if it's in front of you -- do you have it?

17 THE COURT: Yeah.

18 MR. BUSH: Okay. "First, the trust requires that
19 claimants establish that they suffered a personal injury or
20 property damage that has directly resulted in their economic
21 loss to have a compensable BIL claim." How that got twisted is
22 meant compensable by the trust, not compensable in general.
23 And so what happens is, is that the reason why the trust was
24 denying treating the leasehold loss of the Sayegh Brothers is
25 simply because an insurance company paid for their structure

1 damage. And therefore, the trust did not have to pay for the
2 structural damage.

3 And that rule is the rule that then says, oh, if we
4 don't pay for the structure -- if we don't pay, then there is
5 no inverse condemnation. And you see that in paragraph 27, 28,
6 29. It's kind of confusing, but that's where you see that
7 argument that the reason why they're not going to pay the
8 leasehold at eminent domain, just compensation is simply
9 because an insurance company paid for the structural damage. I
10 mean, I want to say that's ridiculous.

11 So apparently, if what the judge told me, you approved
12 this.

13 THE COURT: Well, let me stop right there. I, of
14 course, was not privy to that conversation. And anything that
15 I've done in this case for five years is a matter of record.
16 And I appreciate that you've worked your way through the
17 record. But if there was a conversation or an order or a
18 decision on the record, then I did it. And if there isn't,
19 then I didn't. It's that simple.

20 But the question is, well, let's assume that I didn't,
21 therefore what. In other words, let's assume that the
22 statement made to you by the hearing officer, or you call him
23 the judge, whatever he was, the person who had the final
24 authority here, let's suppose that that was incorrect, that I
25 didn't approve it, therefore what? What follows? And it's one

1 of those things where you've acknowledged that for your other
2 clients, as well, you're at the end of the line. And I don't
3 mean to make light of your clients' situation, but there's
4 nothing I can do about it.

5 MR. BUSH: Well, as I understand it, the confirmation
6 order orders the trust that if they make a change that affects
7 the CRP or the trust agreement or the plan that you have to
8 approve it and --

9 THE COURT: But my point is, what if I didn't approve
10 it. And Mr. Molton's not on the call today, but his colleague
11 is so she's going to have a chance to respond here in a moment.

12 But let's assume for the moment that there was a
13 change, and I didn't approve it, therefore what? In other
14 words, there's still a --

15 MR. BUSH: Therefore, the change is void.

16 THE COURT: Well, or therefore, the decision was
17 incorrect, but it's like a decision of an arbitrator. I mean,
18 if you want to draw an analogy here, I understand your clients
19 didn't affirmatively agree to an arbitration clause the way
20 people in a contract do, but in effect the confirmation order
21 established the trust, and the trust, with exceptions that
22 don't affect your client, has no -- there's no judicial review.
23 So it's, I believe, like a arbitration. If the arbitrator is
24 wrong, that's unfortunate, but there's nothing that the
25 judicial branch can do about it.

1 But let me hear from the trustee's counsel. And
2 you'll have time. And I'm not going to lock you into the time.
3 You'll give me -- I'll give you a reasonable amount of time to
4 respond.

5 So Ms. Sieger-Grimm, you want to -- you have fifteen
6 minutes.

7 MS. SIEGER-GRIMM: Good morning, Your Honor. There
8 are only two facts that are relevant here today. First, Sayegh
9 Brothers does not have a right to appeal the trust's final
10 determination of its claims. And second, as a result of that
11 final determination, Sayegh Brothers has been paid its pro rata
12 share to date on account of all the fire victim claims it
13 asserted.

14 As the trustee explained in the objection to the
15 Sayegh Brothers' motion, Sayegh Brothers did not preserve a
16 right to judicial review of the trust's final determination of
17 his claims, as some other fire victim claimants did. It's
18 notable that all the claimants who did have that right of
19 judicial review accepted their claims' determinations
20 without --

21 THE COURT: Well, that's interesting and nice to know,
22 but it's irrelevant to Sayegh Brothers' situation. The
23 question is -- the question is was there a -- was there a
24 departure from the procedure without compliance with the extant
25 rules in the confirmation order. In other words, is Mr. Bush

1 correct that the trust changed the rules with the BIL and
2 didn't have authority to do so?

3 MS. SIEGER-GRIMM: No, Your Honor. That proposal is
4 not correct.

5 THE COURT: Okay.

6 MS. SIEGER-GRIMM: The guidelines that Mr. Bush is
7 referring to, the business income loss guidelines, there were
8 several different sets of guidelines that were promulgated by
9 the trust for various different types of claims. And that's in
10 accordance with the terms of the claims resolution procedures,
11 which state the trustee and claims administrator will consult
12 with claims processor and other trust professionals to develop
13 claims valuation processes that result in fair and reasonable
14 compensation of eligible claims in accordance with the trust
15 documents, the plan, and the confirmation order. And
16 accordingly, they were developed with a California judge who
17 determined this is the procedure that should be used for all
18 business income loss claims.

19 THE COURT: So you're saying that consistent with the
20 CRP, again with all the acronyms here, consistent with the
21 confirmation order from which the CRP developed from which the
22 BIL developed, there was no need for this Court to come back
23 and adopt or approve the trust's adoption of the BIL because
24 the BIL was the product of that whole process that you
25 described.

1 So it sounds to me like the statement made by the
2 hearing judge was perhaps incorrect. Shall we assume that?

3 MS. SIEGER-GRIMM: I don't know that I would
4 characterize it as incorrect, but it probably -- it didn't
5 change anything, but the guidelines were developed in
6 accordance with the claims resolution procedures, which were
7 approved by this Court. I think I believe that's what the
8 reference was to.

9 THE COURT: No, but if we were a fly on the wall
10 during the conversation that Mr. Bush had with that hearing
11 judge and Mr. Bush says something like, well, where did that
12 come from and the hearing judge says, well, the bankruptcy
13 court authorized that change, then that sounds like it was an
14 incorrect statement.

15 The bankruptcy court confirmed the plan which
16 authorized the CRP which authorized the BIL, and maybe another
17 judge, not wearing his judge robe but wearing his experience
18 hat, was engaged to work with Ms. Yanni and your staff to come
19 up with guidelines. But that wasn't a judicial act. That was
20 just input from an experienced person. I mean, shall we assume
21 that maybe that's more credible or more the source of the
22 situation or not?

23 MS. SIEGER-GRIMM: I'm a little -- I'm not sure we're
24 talking the same point. I'm going to try to address your
25 question. If I don't, please, please let me know.

1 THE COURT: Okay.

2 MS. SIEGER-GRIMM: I believe that the neutral who
3 spoke to Mr. Bush -- and I wasn't there either; we're all
4 getting this second or third-hand -- was referring to the whole
5 process. And the CRP was approved, and the CRP says in it that
6 the trustee and the claims administrator can develop processes
7 to administer these claims. And that's what the BIL are, the
8 very claims valuation processes that were referred to in the
9 CRP.

10 THE COURT: Well, let me try it a different way.
11 Since you've been involved for the trust, I recognize you and
12 your involvement for a long time. I don't remember if you were
13 there at the outset, but I know your experience with it. In
14 your experience in the trust, has any landlord gotten a trust
15 claim allowed for lost income on a lost income methodology, or
16 have they all been given the same outcome? In other words, are
17 there other cases of property owners who suffered property loss
18 and were paid by insurance and also suffered income loss were
19 not allowed their lost income claim in the trust?

20 MS. SIEGER-GRIMM: Well, in a case like this in which
21 there was no property claim ever asserted in the trust, no,
22 they did not get any award related to their property claim.
23 This was a strictly -- and was stated in his opening brief to
24 the trust that it's only business income loss. It didn't
25 involve any property claim at all. And --

1 THE COURT: No, but it did involve a property claim.
2 But he got it from the insurance company. He just went through
3 that. In other words, Mr. Bush's client Sayegh Brothers
4 suffered a loss from the fire -- from the Camp Fire to their
5 property, but they were paid by their insurer. So if they had
6 asserted a claim for lost property, it would have been improper
7 because they had been paid by insurance. And in fact, their
8 insurer probably asserted a claim in the other trust, in the
9 subrogation trust. But that's another story and another issue.

10 Don't you agree that's more likely what happened?

11 MS. SIEGER-GRIMM: That the insurer asserted a claim
12 in the subrogation trust?

13 THE COURT: No, no. We know that Sayegh Brothers got
14 paid 200,000 dollars for their property damage by their
15 insurer. You know that, correct? I know it, so you know it.

16 MS. SIEGER-GRIMM: Correct.

17 THE COURT: Okay.

18 MS. SIEGER-GRIMM: I believe that was just for the
19 business income loss. I don't believe that that was for the --
20 the property damage was a much bigger claim, not --

21 THE COURT: Mr. Bush, wasn't it 200,000 for property
22 damage?

23 MR. BUSH: Yeah, you're wrong. What the insurance
24 paid was three and a half million for the structure --

25 THE COURT: Okay.

1 MR. BUSH: -- and 200,000 for the first year of income
2 loss.

3 THE COURT: Okay. So --

4 MR. BUSH: And that was their policy limit.

5 THE COURT: Okay.

6 MR. BUSH: And so that's why Sayegh then sought the
7 rest of the rent that it lost through the trust and didn't
8 submit a claim for the structural damage.

9 But this is the point that I think is wrong here. The
10 burning down of the building terminated these long-term leases.
11 And because that terminated the leases, doesn't matter who paid
12 for that or even if Sayegh Brothers asked to have money for the
13 building. The harm, the damage, the loss to the income stream
14 occurred the moment of the fire, and that's the damage right
15 there.

16 And under California law, as said in Lynbar, that has
17 to be compensated for, and there's a method in the evidence
18 code for calculating it, which was the method we used. And
19 it's in Lynbar, and as well as this is a Constitutional issue.
20 Your right to just compensation is Constitutional. And that's
21 just been taken away.

22 Anyway, I think that's pretty obvious. And it's done
23 by the procedure of the trust by saying, well, you don't get to
24 have your property because you didn't let us pay for your
25 structure loss. That doesn't even make sense.

1 THE COURT: Okay. But Mr. Bush, what am I supposed to
2 do about it if I agree with you?

3 MR. BUSH: Well, one thing is, is -- and what I say
4 is, is that landlords that had long-term leases that were
5 terminated by the fire should have that loss valued according
6 to California eminent domain law, which is where inverse
7 condemnation comes in.

8 THE COURT: But what do I do about it given the fact
9 that there is a structure -- the word "structure" is the wrong
10 word. There is a -- there is a procedure in place, and it's
11 been in place for years. And it's administered eighteen
12 billion dollars' worth of claims. And we're in the home
13 stretch of it, and there's not much left.

14 And so I have a procedural device in place that has no
15 appeal and no recourse to the judicial system and no practical
16 way to come close to compensating your client, even if I were
17 to agree with it because essentially, you're certainly not
18 advocating, I assume, that I direct the fire trustee to claw
19 back some fair amount of money from all these other fire
20 victims, or maybe you are, but I --

21 MR. BUSH: No, that's the kind of hyperbole that's
22 been thrown at you all during this thing. No, I'm not --

23 THE COURT: I know, but I don't know what to do. Just
24 give me a -- give me a -- give me a solution if I were so
25 inclined to --

1 MR. BUSH: Okay. It's fairly simple.

2 THE COURT: Okay.

3 MR. BUSH: One, you identify how many people are like
4 Sayegh, which is not as many as you would think. Okay. And
5 you're only talking about the class of people that have not
6 accepted their determinations, which according to the
7 statistics is, like, three percent --

8 THE COURT: That's right.

9 MR. BUSH: -- if ninety-seven percent
10 (indiscernible) --

11 THE COURT: (Indiscernible).

12 MR. BUSH: And so there's three percent out there.
13 That could have some of those landlords in it just like Sayegh.
14 So what you would do is say to the trust, with respect to those
15 types of cases, you evaluate the loss according to California
16 eminent domain law. And you don't have to do any figuring
17 because that law gives you the formulas for how you do it.

18 THE COURT: Okay. Mr. Bush, so let's assume that I
19 were persuaded to do that. I'd say, okay, Sayegh, you're in
20 there. And then let's say three other claimants show up. And
21 I direct the trust to revisit those four claimants. And let's
22 just assume further that under the methodology that those four
23 claimants -- but let's focus this on your client, that Sayegh
24 actually has a compensable claim of two million dollars. What
25 am I supposed to do, tell the trustee to add a two-million-

1 dollar claim to the pot?

2 MR. BUSH: The trustee has the money in the pot.

3 THE COURT: Well, I don't know how much is in the pot.
4 I mean, we've already had this discussion. I mean, there might
5 be some amount of money, but there'd have to be some money -- I
6 mean, there's only a finite amount of money in the pot --

7 MR. BUSH: Right.

8 THE COURT: -- left. Okay. And we've --

9 MR. BUSH: Right.

10 THE COURT: -- also just heard that about eleven
11 billion dollars have gone out, so we can know there's not too
12 much left. So presumably your client, if they were the only
13 claimant, would be allowed a claim, and the claim would go in
14 the queue for some amount of distribution for what's left in
15 the pot. That's really the most you could hope for, right?

16 MR. BUSH: Right.

17 THE COURT: Okay.

18 MR. BUSH: And that's one of the reasons why I told
19 Mr. Molton right after the decision, after the one that I can't
20 appeal from, that if there is something wrong and this is
21 overturned because of bankruptcy procedures, then you should be
22 thinking about keeping some money in the pot. And I know they
23 have because six percent is not equal to how much money they
24 got in this last sale of stock.

25 THE COURT: Well, you heard at the start of the

1 hearing that within a very short period of time, the trustee's
2 going to file a new annual report. So the entire PG&E universe
3 will know what's on hand, and one can just simply read that
4 document and see, well, how much is there to be distributed as
5 distinguished from anticipated administrative expenses.

6 But then we come back to the question of you've
7 acknowledged more than once correctly so there's no right to
8 appeal. But the only way for me to accommodate you, if I were
9 so inclined, is to overlook that concession and say, well, but
10 you do have a right to appeal because you're appealing it. I
11 mean, the fact is that --

12 MR. BUSH: I'm not appealing it.

13 THE COURT: Mr. Bush, the fact is you are asking me
14 as a judicial officer to overrule -- I have to reverse, in
15 effect, to vacate, a final decision by the fire trust. In
16 order to do that, I have to -- I have to do what I don't know
17 that I have the legal authority to do so --

18 MR. BUSH: Well, that, I'm not asking -- I'm asking --
19 I'm asking you to follow the rules that you set up that says
20 you have to come to me if you're going to change the rules that
21 all these people voted on. And if you're going to change them,
22 I've got to approve them. And if that didn't happen, that's a
23 procedural problem. Has nothing to do with what really
24 happened in the Sayegh case. It's something to do with the
25 bankruptcy court and how the bankruptcy court proceeded. And

1 you got hoodwinked by these guys.

2 THE COURT: Well, hoodwinked by these guys is hardly a
3 complimentary term.

4 MR. BUSH: I know.

5 THE COURT: All right. Let's hear from counsel again.

6 Ms. Sieger-Grimm, what do you think of --

7 MS. SIEGER-GRIMM: Your Honor --

8 THE COURT: What do you think of his suggestion?

9 MS. SIEGER-GRIMM: Well, first of all, I don't think
10 that there's been a problem because we're talking about -- the
11 inverse condemnation is tied to property claims. None of these
12 were property claims. They were income loss claims.

13 And the decision that he was referring to before about
14 needing a personal injury, that has to do with being paid for
15 lost business where you need some time beyond just, oh, I had a
16 business here and nobody's coming around anymore because of a
17 fire or nobody's coming around because of some other
18 destruction. And that's really the cause. That case limited
19 how much you could pay out on that based on having some other
20 tie to the loss. That's kind of a (indiscernible) --

21 THE COURT: Lynbar involves a small business that had
22 a couple of tenants, and they lost the property to a
23 governmental agency that condemned the property. And they lost
24 the benefit of the ownership and the lease. And the California
25 Court of Appeals, conceding it was perhaps in the minority

1 nationally, said that's the Constitution's requirement under
2 California law. And it affirmed the trial court's decision to
3 award the condemnee lost rental and lost ownership valuation.
4 So it seems to me, unless there's some exception for this weird
5 animal called inverse condemnation when it's of a utility that
6 caused a fire, that is the rule of law that, as Mr. Bush says,
7 the California Constitution requires as a matter of just
8 compensation.

9 So it'd be nice to have all your hypotheticals about
10 other hypotheticals, but Sayegh owned the property and lost it
11 and lost this income source.

12 MS. SIEGER-GRIMM: Well, first of all, that was not an
13 inverse condemnation case. It wasn't directly applicable to
14 what we have here.

15 And second, as Mr. Bush acknowledged, all inverse
16 condemnation damages are tied to property claims. There was
17 never any property claim asserted in the trust. So the trust
18 was not valuing business income losses based on property
19 damage. They were based on what the value of their losses were
20 and how to value them.

21 THE COURT: Mr. Bush said he believes that the
22 application of the rules was not consistent with the procedures
23 that the bankruptcy court approved, and therefore, I should
24 uphold the integrity of the process by insisting that the
25 trustee revisit it for at least his client, if not other

1 similarly situated ones. And again, I'm conceding for these
2 discussion purposes that maybe he makes a persuasive argument,
3 but procedurally, is there a way to do it.

4 And so I'll ask you again, is there a procedural way
5 for me to do it, to honor the concept that was -- and certainly
6 part of the inverse condemnation ruling that I was persuaded to
7 make? And isn't it not fair to tell the trust, at least for
8 Sayegh Brothers, follow those rules?

9 MS. SIEGER-GRIMM: Your Honor, well, especially at
10 this point in the trust, where every single claim of the 71,803
11 fire victim claimants -- and that's over 255; it's about 255
12 unique fire victim claims -- has been determined. Ninety-eight
13 percent of those claims determinations have been accepted.
14 We're down --

15 THE COURT: He's not asking me to revisit any of
16 those.

17 MS. SIEGER-GRIMM: So how did -- but that leaves the
18 whole concept of treating everyone the same, to the extent that
19 there's anyone else who had accepted a claim and now wants to
20 say, oh, wait, wait, wait, wait, you have to reevaluate mine as
21 well. You can't order the trust to treat one claimant
22 differently than everyone else.

23 And then, I mean, that unravels a big roll of yarn
24 there because you have then the ability for anyone to come
25 forward and say, well, you need to reevaluate my claim based on

1 this and you need to reevaluate my claim based on that. I
2 mean, that could undermine all the progress that's been made so
3 far to the detriment of all the fire victim claimants who want
4 everything just to be finished. They've been waiting a long
5 time.

6 MR. BUSH: And the lawyers too, believe me.

7 MS. SIEGER-GRIMM: No, I understand. But here, let me
8 restate the question, and then I guess I going to have to take
9 this under advisement.

10 But it seems to me that the skies aren't falling quite
11 as dramatically as counsel would suggest, that Mr. Bush, you
12 did not have the foretaste to suggest that I claw back that
13 70,000 fire victims' money because those same fire victims are
14 probably unhappy with the fact that they are only getting about
15 sixty-seven cents on the dollar anyway, five years later.

16 So leaving that aside, so let's assume, Mr. Bush, even
17 if there's only one and it's Sayegh Brothers, Sayegh Brothers
18 says I didn't get -- my claim wasn't properly processed,
19 therefore reevaluate my claim and at least allow my claim and
20 let it get paid from what is left in the trust. And I don't
21 hear you advocating that will we claw back. But perhaps if I
22 directed the trustee to revisit your claim and it was then
23 allowed and determined to be worth, let's say hypothetically,
24 two million dollars, then it would be entitled to whatever a
25 two-million-dollar claim would get based upon the limited fund

1 still remaining. And I don't know whether that would be enough
2 to take you up to the same percentage or not. I don't know
3 that.

4 The question is whether there's any justification for
5 that. And I don't have an answer to that, and that's what I'm
6 going to have to struggle with because I think the trustee's
7 counsel is correct. I don't expect thousands of claimants who
8 are going to be satisfied with a sixty-seven percent recovery
9 to be happy if they find that someone else came in after the
10 fact and after the nonjudicial review process is all over with,
11 comes in and makes a persuasive argument. It is a slippery
12 slope, not to take back money, but to require a revisiting of
13 every single claimant that wasn't happy with the determination.

14 And so I don't know. I guess --

15 MR. BUSH: Yeah, I --

16 THE COURT: -- I'll listen to any suggestions either
17 of you have, and then I guess I'm going to have to take the
18 matter under advisement.

19 MR. BUSH: Well, I think, first off, we have to
20 remember we are talking about a Constitutional issue of just
21 compensation. And as far as the bankruptcy court goes, under
22 the Fifth Amendment, you're well advised that you have to
23 protect creditors' property rights under the Fifth Amendment.
24 But at the very least, yes, you would direct the trust to apply
25 the correct application of eminent domain law to the Sayegh

1 claim, and you could leave it at that. You could also ask the
2 trust to look at the remaining people that have not signed and
3 released -- all the other people have released their claims,
4 more than likely, I'm guessing.

5 THE COURT: Oh, some are not happy about that, but
6 that's another story.

7 MR. BUSH: Yeah. Anyway, I think it's relatively
8 straightforward. Sayegh Brothers at least came forward and
9 said the procedure was wrong and here's why. And doesn't
10 matter what the results are, the procedures were wrong. So
11 just use the right procedures. We'll be happy with the
12 results.

13 THE COURT: See, that's what I have to disagree with
14 you. I can't make that leap. The procedures were in place and
15 perhaps were misapplied. And perhaps if the hearing officer
16 had heard this same argument, the hearing officer might have
17 said, you know what, Mr. Bush, you're right, and I'm going to
18 order a reconsideration. But the hearing officer and you
19 therefore say the procedures were wrong, but I don't know that
20 that's true. I mean, and so I think that's what I'm struggling
21 with as much as anything else.

22 In other words, I learned a long time ago in another
23 bankruptcy case that has nothing to do with fire damage about
24 what happens when a court makes a wrong decision. Courts have
25 jurisdiction to make the wrong decision, and if they make the

1 wrong decision, the remedy is to appeal. And here, for other
2 reasons that we've said, there was no right of appeal. But
3 that's a different issue.

4 And so I'm going to assume for these purposes that it
5 appears that the trust made the wrong decision. But I don't
6 know what to do about it because it is a slippery slope. And I
7 draw the analogy, the arbitrator who makes an incorrect legal
8 decision usually, except when there's mischief, and nobody's
9 suggesting mischief here. But turns out the arbitrator had a
10 personal relationship with one of the litigants or was taking a
11 bribe or some mischief, courts can set aside the arbitration.
12 But that's not been suggested here. Just, yet, worse, there
13 was an error of application of the correct legal principle.

14 In other words, the hearing officer had a jurisdiction
15 to be incorrect, and just like an arbitrator has jurisdiction
16 to be incorrect. So that's what I'm struggling with. But
17 anyway, I appreciate the way you presented it and your
18 approach.

19 Ms. Grimm, any more final comments?

20 MS. SIEGER-GRIMM: Your Honor, first of all, the trust
21 does not agree that the law was misapplied here.

22 To the extent that anything had to be revisited with
23 the Sayegh Brothers' claim, as initial point, that became a
24 final determination. It didn't need to be accepted because
25 under the claims resolution procedures, once a trustee

1 determination is issued, its final. And because it is a final
2 decision, like every other final decision, it then proceeds to
3 the payment process. And the trustee -- and the trust paid
4 Sayegh Brothers on September 15th its sixty-percent pro rata
5 share.

6 As I said before, we're contemplating an increase to
7 sixty-six percent. To the extent that the trust has to revisit
8 this claim, which of course will spur other people to come to
9 you and say you have to reconsider my claim as well, we're not
10 going to go to sixty-six percent. We have to stop and say,
11 okay, well, what can we pay. We're at the point now where
12 every decision that is made with regard to paying or raising
13 the pro rata has to be made in consideration of everything that
14 remains to be paid.

15 THE COURT: Now, you've told me, there still are --
16 there are still some determinations up for review, right?

17 MS. SIEGER-GRIMM: Two percent.

18 THE COURT: Okay. So but just if any single claim is
19 reversed by the hearing officer, then you have to revisit it,
20 don't you? So --

21 MS. SIEGER-GRIMM: But that has already been taken
22 into account.

23 THE COURT: Well, wait. I mean, why is it -- why is
24 it taken into account? What if there's a claim for a 10,000
25 dollars and the hearing officer says that was incorrect, it

1 should be recalculated, and it turns out to be ten million
2 dollars? Then what happens?

3 MS. SIEGER-GRIMM: Because the trust has engaged
4 professionals who have been determining what are the -- what
5 are the variants that could be for this claim, what could
6 possibly come if this claim is appealed, what's the largest
7 amount we could get, and that's how the decision on what the
8 pro rata amount that can actually be paid is made.

9 So to the extent you want to call it a holdback or
10 whatever until a claim is finally determined, the trust has to
11 take into consideration what that might cost. And to the
12 extent that we were too conservative and have more money left
13 than we expected, then there'll be another bump up in the pro
14 rata distribution. But those determinations are made based on
15 what we have determined is feasible, what can be paid without
16 having to claw back, without having to say that the first
17 person who got paid got paid more or less than the last person
18 who got paid.

19 Everything has to be held constant, so everyone is
20 treated equally. So every time a claim is finalized, that's
21 the answer. We're not thinking about whether that's going to
22 wiggle and become bigger. So to the extent that anything has
23 to be revisited, that hasn't been considered as far as what
24 we're able to distribute on a pro rata basis. And that can
25 throw off everything.

1 THE COURT: Okay. I got it.

2 Mr. Bush, I don't know why you're smiling.

3 MR. BUSH: Well, this one theme has run through this
4 all the time. What I'm talking about is the method that was
5 used, and when they adapted the BIL method, its application
6 denied Constitutional right to just compensation.

7 THE COURT: No, I know. I know what you're saying.

8 MR. BUSH: So it's not --

9 THE COURT: But the remedy is to go back and start
10 over again. That's what you just said, even if it's just for
11 your client. And that's what (indiscernible) --

12 MR. BUSH: I would say that all things considered,
13 since this client came to you with this argument, this client
14 should definitely benefit from the correct ruling. Whether or
15 not there's some more like Mr. Sayegh in the group that have
16 not accepted, that two percent, kind of doubtful. And it's
17 also doubtful that there's very many in the group out there
18 that already accepted that --

19 THE COURT: I wish I knew that were true. I have to
20 be honest with you, if I could somehow predict in my crystal
21 ball that there isn't another person out there in the PG&E
22 victim universe who wouldn't say, I'd like to have mine
23 reconsidered, and I knew for sure there was only one, I might
24 do some arm-twisting here about getting your clients more
25 money. The problem is I just, that's not the way to administer

1 the law.

2 So even though the trustee's counsel differs with you
3 that California law has been ignored, you make a persuasive
4 argument, and you may be correct. And I certainly went to and
5 read the Lynbar case, and there's no question it says what it
6 says. And the fact that Lynbar itself was not an inverse
7 condemnation case, it does have some pretty strong language in
8 terms of interpreting the principles that you rely on.

9 But I just simply can't accept your argument that, oh,
10 I can just get around all this other problem by saying, well,
11 this is just a little bankruptcy procedural error because I
12 don't know that it was. So I have to take the position that I
13 wish there was never a question that there was an error made in
14 the trust, but if there was an error made in the trust, I don't
15 have a solution.

16 But in any event, I'm going to thank both of you for
17 the presentation and the challenging problem you've presented
18 to me and just take the matter under submission and give it
19 some further thought because life isn't as simple. I can't
20 just say, why don't you two guys go work something out that
21 satisfies the Sayegh Brothers enough to make this problem go
22 away. I have to take into account the next step, if there is
23 another step.

24 So the matter is going to stand submitted. I
25 appreciate the hard work and the professional presentations for

1 both of you and on behalf of your clients. Thank you very
2 much. That concludes the hearing.

3 MR. BUSH: Thank you.

4 MS. SIEGER-GRIMM: Thank you, Your Honor.

5 MR. BUSH: Take care.

6 THE COURT: Thank you.

7 (Whereupon these proceedings were concluded at 10:48 AM)
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C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ RIVER WOLFE, CDLT-265

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Date: April 10, 2024

A	affairs (1) 4:23	4:15	authorized (3) 18:13,16,16	36:16;37:1
	affect (1) 15:22	Appearances (1) 3:7	available (2) 7:15;10:24	bottom (4) 7:10,10;11:11;13:9
ability (1) 28:24	affected (1) 12:2	appears (1) 32:5	award (2) 19:22;27:3	brains (1) 9:1
able (1) 34:24	affects (1) 15:6	applicable (1) 27:13	awarded (1) 5:9	branch (1) 15:25
absent (1) 7:15	affirmatively (1) 15:19	application (4) 27:22;30:25;32:13; 35:5	awards (1) 4:25	bribe (1) 32:11
Absolutely (1) 12:13	affirmed (1) 27:2	applied (2) 7:3;8:22	away (2) 21:21;36:22	brief (2) 6:1;19:23
accept (4) 3:18,19,24;36:9	again (6) 4:12;17:20;26:5; 28:1,4;35:10	applies (2) 8:8,18	B	bring (1) 4:1
accepted (9) 7:9;9:2;16:19;23:6; 28:13,19;32:24; 35:16,18	agency (1) 26:23	apply (5) 8:6,21;10:7;13:7; 30:24		Brothers (14) 4:17;13:24;16:9,11, 15;20:3,13;21:12; 28:8;29:17,17;31:8; 33:4;36:21
accommodate (1) 25:8	ago (2) 9:15;31:22	appreciate (3) 14:16;32:17;36:25	back (10) 6:3;9:9;17:22; 22:19;25:6;29:12,21; 30:12;34:16;35:9	Brothers' (3) 16:15,22;32:23
accordance (3) 17:10,14;18:6	agree (5) 15:19;20:10;22:2, 17;32:21	approach (1) 32:18	backing (1) 9:5	Brown (1) 3:15
according (3) 22:5;23:6,15	agreement (2) 10:7;15:7	approve (6) 14:25;15:8,9,13; 17:23;25:22	ball (1) 35:21	building (2) 21:10,13
accordingly (1) 17:16	ahead (2) 6:10;9:5	approved (8) 6:16,20;11:19,25; 14:11;18:7;19:5; 27:23	bankruptcy (15) 6:16;11:19,21;12:4, 5,21;18:12,15;24:21; 25:25,25;27:23; 30:21;31:23;36:11	bump (1) 34:13
account (4) 16:12;33:22,24; 36:22	allow (1) 29:19	approving (1) 12:22	based (9) 4:25;8:1;26:19; 27:18,19;28:25;29:1, 25;34:14	burning (1) 21:10
acknowledged (3) 15:1;25:7;27:15	allowed (4) 19:15,19;24:13; 29:23	APRIL (1) 3:1	basis (2) 8:6;34:24	Bush (79) 3:18,23;4:4,6,11,13, 15,16,16;5:24;6:6,8, 11,13;7:15,22;8:10, 14,17;9:7,16,18; 10:23;11:3,5,9;12:8, 12,12,14,17,19;13:3, 18;15:5,15;16:25; 17:6;18:10,11;19:3; 20:21,23;21:1,4,6; 22:1,3,21;23:1,3,9,12, 18;24:2,7,9,16,18; 25:12,13,18;26:4; 27:6,15,21;29:6,11, 16;30:15,19;31:7,17; 35:2,3,8,12;37:3,5
acronyms (1) 17:20	Amendment (2) 30:22,23	arbitration (3) 15:19,23;32:11	bearing (1) 10:15	Bush's (1) 20:3
act (1) 18:19	amount (7) 16:3;22:19;24:5,6, 14;34:7,8	arbitrator (5) 15:17,23;32:7,9,15	became (1) 32:23	business (8) 17:7,18;19:24; 20:19;26:15,16,21; 27:18
actually (2) 23:24;34:8	analogy (2) 15:18;32:7	argued (1) 9:11	become (1) 34:22	C
adapted (1) 35:5	animal (1) 27:5	argues (1) 13:3	begin (1) 6:10	
add (1) 23:25	announced (1) 5:10	argument (10) 4:20;6:4;9:20;14:7; 28:2;30:11;31:16; 35:13;36:4,9	behalf (1) 37:1	calculating (1) 21:18
added (1) 10:9	annual (2) 5:13;25:2	arm-twisting (1) 35:24	believes (1) 27:21	calculations (1) 7:4
address (1) 18:24	answered (1) 7:3	around (3) 26:16,17;36:10	benefit (2) 26:24;35:14	CALIFORNIA (21) 3:1;6:16;7:10;8:25; 9:12,21,22,22,24; 10:3;11:10;12:3; 13:12;17:16;21:16; 22:6;23:15;26:24;
administer (2) 19:7;35:25	anticipated (1) 25:5	aside (3) 8:4;29:16;32:11	beyond (1) 26:15	
administered (1) 22:11	anymore (1) 26:16	asserted (6) 16:13;19:21;20:6,8, 11;27:17	big (1) 28:23	
administrative (1) 25:5	apparently (1) 14:11	assume (11) 6:4;14:20,21;15:12; 18:2,20;22:18;23:18, 22;29:16;32:4	bigger (2) 20:20;34:22	
administrator (4) 9:25;10:6;17:11; 19:6	appeal (12) 6:13,14;11:15,16, 17;16:9;22:15;24:20; 25:8,10;32:1,2	attempting (1) 3:17	BIL (12) 7:7;10:8;12:22; 13:14,21;17:1,22,23, 24;18:16;19:7;35:5	
adopt (1) 17:23	appealed (1) 34:6	attorneys' (1) 7:11	billion (5) 5:1,6,9;22:12;24:11	
adoption (1) 17:23	appealing (2) 25:10,12	authority (3) 14:24;17:2;25:17	board (1) 12:13	
advised (1) 30:22	Appeals (1) 26:25		both (2)	
advisement (2) 29:9;30:18	appearance (1)			
advocating (2) 22:18;29:21				

27:2,7;36:3 Call (6) 3:3;5:12;8:5;14:22; 15:10;34:9 called (1) 27:5 Calling (1) 3:5 came (4) 6:21;30:9;31:8; 35:13 camera (3) 4:7,8,18 Camp (1) 20:4 can (15) 4:9,10,12;11:21; 15:4,25;19:6;24:11; 25:3;32:11;33:11; 34:8,15,24;36:10 capitalized (1) 7:5 care (1) 37:5 case (19) 7:19,20,21,21,24; 8:2,3,7,22;9:13; 12:13;14:15;19:20; 25:24;26:18;27:13; 31:23;36:5,7 cases (4) 6:23;8:17;19:17; 23:15 Cathy (1) 10:6 caught (1) 6:18 cause (2) 8:1;26:18 caused (1) 27:6 cents (1) 29:15 certainly (3) 22:17;28:5;36:4 challenging (1) 36:17 chance (1) 15:11 change (10) 6:20;8:5,5;15:6,13, 15:18;5,13;25:20,21 changed (1) 17:1 characterize (1) 18:4 cited (1) 7:24 cites (1) 7:24 claim (38) 7:5,15;13:21;19:15, 19,21,22,25;20:1,6,8,	11,20;21:8;23:24; 24:1,13,13;27:17; 28:10,19,25;29:1,18, 19,19,22,25;31:1; 32:23;33:8,9,18,24; 34:5,6,10,20 claimant (3) 24:13;28:21;30:13 claimants (9) 13:19;16:17,18; 23:20,21,23;28:11; 29:3;30:7 claims (29) 5:1;6:20;9:25;10:5, 6,8;16:10,12,17;17:9, 10,11,12,13,14,18; 18:6;19:6,7,8;22:12; 26:11,12,12;27:16; 28:12,13;31:3;32:25 claims' (1) 16:19 clarify (1) 4:21 class (1) 23:5 clause (1) 15:19 claw (4) 22:18;29:12,21; 34:16 CLERK (5) 3:4,17,21;4:1,5 client (11) 6:4,25;15:22;20:3; 22:16;23:23;24:12; 27:25;35:11,13,13 clients (4) 15:2,18;35:24;37:1 clients' (1) 15:3 close (1) 22:16 code (1) 21:18 colleague (1) 15:10 coming (3) 11:15;26:16,17 comments (1) 32:19 committee (1) 10:24 company (4) 13:6,25;14:9;20:2 Comparing (1) 5:2 compensable (6) 7:15;13:10,21,22, 22;23:24 compensated (1) 21:17 compensating (1) 22:16	compensation (7) 13:4;14:8;17:14; 21:20;27:8;30:21; 35:6 compliance (1) 16:24 complimentary (1) 26:3 conceded (1) 8:23 conceding (2) 26:25;28:1 concept (2) 28:5,18 concession (1) 25:9 concluded (1) 37:7 concludes (1) 37:2 condemnation (19) 6:24;7:12,18,20,21, 25;8:3,8,19;9:19; 13:7;14:5;22:7;26:11; 27:5,13,16;28:6;36:7 condemned (1) 26:23 condemnee (1) 27:3 confirmation (7) 6:21;12:2;15:5,20; 16:25;17:15,21 confirmed (1) 18:15 confused (1) 10:4 confusing (1) 14:6 connecting (1) 4:11 conservative (1) 34:12 consideration (2) 33:13;34:11 considered (2) 34:23;35:12 consistent (4) 8:25;17:19,20; 27:22 constant (1) 34:19 constantly (1) 10:24 Constitution (1) 27:7 Constitutional (7) 9:20;10:3;13:4; 21:19,20;30:20;35:6 Constitution's (1) 27:1 consult (1) 17:11 contacted (1)	10:4 contemplating (1) 33:6 contract (1) 15:20 contrary (1) 6:16 conversation (3) 14:14,17;18:10 Corporation (1) 3:6 corrected (1) 11:4 correctly (1) 25:7 cost (1) 34:11 costs (1) 7:11 Counsel (7) 3:9;10:18;16:1; 26:5;29:11;30:7;36:2 couple (1) 26:22 course (3) 12:3;14:14;33:8 Court (99) 3:3,4,7,12,16,19,23; 4:3,6,12,14,18;5:7,12, 16,18,20,23;6:7,10, 12,17;7:13,17,23; 8:11,15,20;9:14,17; 10:12;11:1,4,7,19,21, 25;12:7,15,18,21; 13:2,17;14:13;15:9, 16;16:21;17:5,19,22; 18:7,9,13,15;19:1,10; 20:1,13,17,21,25; 21:3,5;22:1,8,23;23:2, 8,11,18,24;3:8,10,17, 25;25:13,25,25;26:2, 5,8,21,25;27:21,23; 28:15;30:16,21;31:5, 13,24;33:15,18,23; 35:1,7,9,19;37:6 courts (3) 7:10;31:24;32:11 court's (1) 27:2 covers (1) 8:2 credible (1) 18:21 creditors' (1) 30:23 criticizing (1) 10:21 CRP (9) 10:7;12:2;15:7; 17:20,21;18:16;19:5, 5,9 crystal (1) 35:20	Currently (1) 5:9 D damage (24) 6:24;7:1,16;8:6,9, 24;9:3,8,19;13:5,8,10, 20;14:1,2,9;20:14,20, 22;21:8,13,14;27:19; 31:23 damages (1) 27:16 date (2) 5:5;16:12 David (1) 11:24 deal (2) 11:12,15 decision (19) 7:18;10:1,17;14:18; 15:16,17;24:19; 25:15;26:13;27:2; 31:24,25;32:1,5,8; 33:2,2,12;34:7 declined (1) 3:21 declines (1) 4:2 definitely (1) 35:14 denied (2) 13:4;35:6 Dennis (1) 3:5 denying (1) 13:24 departure (1) 16:24 described (1) 17:25 destruction (1) 26:18 determination (8) 7:9;8:24;16:10,11, 16;30:13;32:24;33:1 determinations (6) 4:25;16:19;23:6; 28:13;33:16;34:14 determined (5) 17:17;28:12;29:23; 34:10,15 determining (1) 34:4 detriment (1) 29:3 develop (2) 17:12;19:6 developed (4) 17:16,21,22;18:5 device (1) 22:14 different (4)
---	--	--	--	--

17:8,9;19:10;32:3 differently (1) 28:22 differs (1) 36:2 direct (3) 22:18;23:21;30:24 directed (1) 29:22 directly (2) 13:20;27:13 disagree (1) 31:13 discussion (3) 9:3;24:4;28:2 dispositive (1) 10:20 distinguished (1) 25:5 distribute (1) 34:24 distributed (3) 5:2,6;25:4 distribution (3) 5:3;24:14;34:14 document (1) 25:4 documents (1) 17:15 dollar (2) 24:1;29:15 dollars (8) 5:6,9;20:14;23:24; 24:11;29:24;33:25; 34:2 dollars' (1) 22:12 domain (7) 8:18;9:9,22;14:8; 22:6;23:16;30:25 done (4) 7:4;8:15;14:15; 21:22 doubtful (2) 35:16,17 down (2) 21:10;28:14 dramatically (1) 29:11 draw (2) 15:18;32:7 due (1) 5:13 during (4) 10:24;12:20;18:10; 22:22	effect (2) 15:20;25:15 eighteen (1) 22:11 either (2) 19:3;30:16 eleven (2) 5:1;24:10 eligibility (1) 10:8 eligible (1) 17:14 eliminates (1) 12:3 else (4) 28:19,22;30:9; 31:21 eminent (7) 8:18;9:9,22;14:8; 22:6;23:16;30:25 end (1) 15:2 engaged (2) 18:18;34:3 enough (2) 30:1;36:21 entire (1) 25:2 entitled (1) 29:24 equal (1) 24:23 equally (1) 34:20 equipment (1) 6:23 error (4) 32:13;36:11,13,14 especially (2) 11:22;28:9 Essentially (2) 10:13;22:17 establish (1) 13:19 established (1) 15:21 estimated (1) 5:3 evaluate (1) 23:15 even (9) 8:6;10:15;11:22; 21:12,25;22:16; 29:16;35:10;36:2 event (1) 36:16 everybody's (1) 11:12 everyone (3) 28:18,22;34:19 evidence (1) 21:17 except (1)	32:8 exception (1) 27:4 exceptions (1) 15:21 Exhibit (2) 10:2;13:15 exist (1) 7:7 expect (2) 5:18;30:7 expected (1) 34:13 expenses (1) 25:5 experience (4) 8:22;18:17;19:13, 14 experienced (1) 18:20 expert (1) 7:4 experts (1) 9:2 explain (2) 10:10;11:9 explained (2) 13:9;16:14 extant (1) 16:24 extends (2) 8:2,9 extent (6) 28:18;32:22;33:7; 34:9,12,22	finest (1) 16:5 Fifth (2) 30:22,23 fifty-seven (1) 5:2 figure (1) 12:19 figuring (1) 23:16 file (2) 5:22;25:2 filed (4) 6:13;7:6,16;12:24 final (10) 14:23;16:9,11,16; 25:15;32:19,24;33:1, 1,2 finalized (1) 34:20 finally (1) 34:10 find (2) 12:21;30:9 finished (1) 29:4 finite (1) 24:6 fire (19) 3:15;6:22;16:12,17; 20:4,4;21:14;22:5,18, 19;25:15;26:17;27:6; 28:11,12;29:3,13,13; 31:23 firm (1) 4:16 first (11) 6:9,15;13:14,18; 16:8;21:1;26:9;27:12; 30:19;32:20;34:16 five (3) 6:9;14:15;29:15 fly (1) 18:9 focus (1) 23:23 follow (3) 9:24;25:19;28:8 following (2) 9:22;11:10 follows (1) 14:25 forensic (1) 7:4 foretaste (1) 29:12 forging (1) 8:12 formulas (1) 23:17 forward (2) 28:25;31:8 four (3)	6:22;23:21,22 freezing (1) 7:13 Friday (1) 5:22 front (1) 13:16 frozen (1) 7:14 fund (1) 29:25 fundamental (1) 8:24 further (3) 11:17;23:22;36:19
G				
				general (1) 13:22 generally (1) 4:24 given (2) 19:16;22:8 gives (1) 23:17 God (1) 12:6 goes (1) 30:21 Good (4) 3:7;4:6;12:9;16:7 governmental (1) 26:23 Grimm (2) 4:21;32:19 group (2) 35:15,17 guess (4) 3:20;29:8;30:14,17 guessing (1) 31:4 guidelines (5) 17:6,7,8;18:5,19 guys (3) 26:1,2;36:20
H				
				half (2) 7:8;20:24 hand (3) 3:25;4:3;25:3 happen (1) 25:22 happened (3) 12:1;20:10;25:24 happening (1) 4:2 happens (3) 13:23;31:24;34:2 happy (4) 30:9,13;31:5,11
E				
earlier (1) 13:9 economic (1) 13:20				

hard (1) 36:25	19,24;20:19;21:1,13; 26:12;27:11,18	33:1	29:6	look (2) 11:11;31:2
hardly (1) 26:2	incorrect (9) 14:24;15:17;18:2,4, 14:32;7,15,16;33:25	J	leap (1) 31:14	looked (2) 12:9;13:14
harm (1) 21:13	incorrectly (1) 7:19	join (1) 3:18	learn (1) 12:5	looks (1) 4:3
hat (1) 18:18	increase (1) 33:6	joining (1) 4:5	learned (2) 6:14;31:22	loss (19) 7:2;8:2,6;13:21,24; 17:7,18;19:17,18,24; 20:4,19;21:2,13,25; 22:5;23:15;26:12,20
hear (6) 4:9,10,12;16:1; 26:5;29:21	increased (1) 5:11	JOSE (1) 3:1	lease (1) 26:24	losses (2) 27:18,19
heard (4) 3:23;24:10,25; 31:16	Indiscernible (5) 4:13;23:10,11; 26:20;35:11	judge (8) 14:11,23;17:16; 18:2,11,12,17,17	leasehold (4) 9:12;13:12,24;14:8	lost (15) 8:9;9:4,8;19:15,15, 19:20;6:21;7:26;15, 22,23;27:3,3,10,11
hearing (15) 6:18;11:18,22; 14:22;18:2,10,12; 25:1;31:15,16,18; 32:14;33:19,25;37:2	initial (1) 32:23	judicial (7) 15:22,25;16:16,19; 18:19;22:15;25:14	leases (3) 21:10,11;22:4	lot (1) 12:6
held (1) 34:19	injury (2) 13:19;26:14	jurisdiction (3) 31:25;32:14,15	least (8) 6:17;8:22;9:3; 27:25;28:7;29:19; 30:24;31:8	Lynbar (7) 9:13,14;21:16,19; 26:21;36:5,6
here's (1) 31:9	input (1) 18:20	justification (1) 30:4	leave (3) 4:18;6:9;31:1	Lyndon (1) 7:19
history (1) 10:13	insisting (1) 27:24	K	leaves (1) 28:17	M
holdback (1) 34:9	instances (1) 9:23	keep (1) 12:12	leaving (2) 8:4;29:16	magnificent (1) 12:17
home (1) 22:12	insurance (8) 7:1;13:5,25;14:9; 19:18;20:2,7,23	keeping (1) 24:22	left (6) 22:13;24:8,12,14; 29:20;34:12	maker (1) 10:18
honest (1) 35:20	insurer (4) 20:5,8,11,15	kick (1) 3:20	legal (4) 10:14;25:17;32:7, 13	makes (4) 28:2;30:11;31:24; 32:7
Honor (10) 3:17;4:1;5:5;16:7; 17:3;26:7;28:5,9; 32:20;37:4	integrity (1) 27:24	kind (8) 6:18;7:8;10:4;13:8; 14:6;22:21;26:20; 35:16	Lenzi (1) 4:16	many (3) 23:3,4;35:17
Honorable (1) 3:4	interest (3) 7:12;9:12;13:11	knew (6) 6:23,24;11:17,18; 35:19,23	less (1) 34:17	March (4) 4:24;5:10,14;10:1
hoodwinked (2) 26:1,2	interesting (1) 16:21	knowledge (1) 9:4	letter (1) 11:11	matter (10) 3:5;5:24;6:3;14:15; 21:11;27:7;30:18; 31:10;36:18,24
hope (1) 24:15	interpreting (1) 36:8	L	liability (4) 6:23;7:25;8:23;9:2	may (5) 8:21;11:1,7,7;36:4
hyperbole (1) 22:21	into (6) 9:1;16:2;33:22,24; 34:11;36:22	landlord (1) 19:14	life (1) 36:19	maybe (5) 11:21;18:16,21; 22:20;28:2
hypothetically (1) 29:23	inverse (18) 6:24;7:12,18,21,25; 8:3,8,19;9:19;13:7; 14:5;22:6;26:11;27:5, 13,15;28:6;36:6	landlords (2) 22:4;23:13	light (1) 15:3	mean (17) 5:15;7:23;8:15;9:8; 10:17;14:10;15:3,17; 18:20;24:4,4,6;25:11; 28:23;29:2;31:20; 33:23
hypotheticals (2) 27:9,10	invitation (3) 3:18,19,24	language (1) 36:7	likely (2) 20:10;31:4	means (1) 5:1
I	involve (2) 19:25;20:1	largest (1) 34:6	limit (1) 21:4	meant (3) 6:23;11:5;13:22
idea (1) 6:19	involved (5) 6:22;10:5,24;12:6; 19:11	last (2) 24:24;34:17	limited (2) 26:18;29:25	measure (1) 9:18
identify (1) 23:3	involve (1) 19:12	later (2) 7:8;29:15	line (1) 15:2	method (5) 7:9;21:17,18;35:4,5
ignored (1) 36:3	involvement (1) 19:12	law (24) 4:16;6:16;7:24; 8:12,25;9:12,18,21, 22,24;10:3;11:10; 12:3,5;21:16;22:6; 23:16,17;27:2,6; 30:25;32:21;36:1,3	link (1) 12:25	methodology (2) 19:15;23:22
improper (1) 20:6	irrelevant (1) 16:22	lawyer (1) 12:4	listen (1) 30:16	
inclined (2) 22:25;25:9	issue (7) 4:22;5:25;11:25; 20:9;21:19;30:20; 32:3	lawyers (1)	litigants (1) 32:10	
income (20) 7:2,5;8:2,6,9;9:4,8; 17:7,18;19:15,15,18,	issued (1)		little (3) 5:8;18:23;36:11	
			lock (1) 16:2	
			long (3) 19:12;29:4;31:22	
			long-term (2) 21:10;22:4	

microphone (2) 4:7,9	must (1) 12:9	25:7;32:25	19:18;20:5,7,14,24; 21:11;26:14;29:20; 33:3,14;34:8,15,17, 17,18	28:10;32:23;33:11
might (6) 9:1;10:19;24:4; 31:16;34:11;35:23	muted (2) 3:9;4:9	one (12) 4:21;14:25;22:3; 23:3;24:18,19;25:3; 28:21;29:17;32:10; 35:3,23	panelist (1) 3:22	policy (1) 21:4
Mike (1) 4:16	myself (1) 12:20	ones (1) 28:1	papers (1) 7:17	portion (1) 6:4
million (5) 5:1;20:24;23:24; 29:24;34:1	N	only (10) 7:1;16:8;19:24; 23:5;24:6,12;25:8; 29:14,17;35:23	paragraph (3) 12:25;13:15;14:5	position (1) 36:12
mind (1) 8:8	nationally (1) 27:1	opening (2) 6:18;19:23	part (3) 6:9;13:6;28:6	possible (1) 6:25
minds (1) 9:1	nature (1) 8:1	oOo- (1) 3:2	past (2) 5:23;10:13	possibly (1) 34:6
mine (2) 28:20;35:22	need (6) 4:7;17:22;26:15; 28:25;29:1;32:24	opening (2) 6:18;19:23	pay (8) 13:6;14:1,4,4,7; 21:24;26:19;33:11	pot (6) 24:1,2,3,6,15,22
minority (1) 26:25	needing (1) 26:14	opinion (2) 7:11;10:14	paying (2) 13:8;33:12	practical (1) 22:15
minutes (3) 6:8;12:10;16:6	needs (1) 3:18	opinions (2) 10:15,18	payment (2) 7:1;33:3	predict (1) 35:20
misapplied (2) 31:15;32:21	neutral (2) 6:17;19:2	order (12) 3:3;6:21;12:2; 14:17;15:6,20;16:25; 17:15,21;25:16; 28:21;31:18	people (10) 10:5,19;11:14; 15:20;23:3,5;25:21; 31:2,3;33:8	prejudgment (1) 7:11
mischievous (3) 32:8,9,11	new (2) 8:12;25:2	orders (1) 15:6	percent (13) 5:3,4,11;23:7,9,12; 24:23;28:13;30:8; 33:7,10,17;35:16	presentation (1) 36:17
mispronounced (1) 9:14	next (1) 36:22	out (13) 3:20;6:8,21;9:25; 12:20;23:12;24:11; 26:19;32:9;34:1; 35:17,21;36:20	percentage (1) 30:2	presentations (1) 36:25
missing (2) 12:22,25	nice (2) 16:21;27:9	outcome (1) 19:16	perhaps (5) 18:2;26:25;29:21; 31:15,15	presented (3) 6:3;32:17;36:17
misunderstood (2) 11:1,7	nineteen (1) 5:8	outset (1) 19:13	period (1) 25:1	preserve (1) 16:15
Molton (6) 4:22;10:9;11:24; 12:24;13:3;24:19	Ninety-eight (1) 28:12	over (3) 28:11;30:10;35:10	person (5) 14:23;18:20;34:17, 17;35:21	presiding (1) 3:5
Molton's (1) 15:10	ninety-seven (1) 23:9	overlook (1) 25:9	personal (3) 13:19;26:14;32:10	presumably (1) 24:12
moment (4) 9:15;15:11,12; 21:14	nobody's (3) 26:16,17;32:8	override (1) 25:14	persuaded (2) 23:19;28:6	pretty (2) 21:22;36:7
money (12) 21:12;22:19;24:2,5, 5,6,22,23;29:13; 30:12;34:12;35:25	None (1) 26:11	oversight (1) 10:23	persuasive (4) 10:19;28:2;30:11; 36:3	principle (1) 32:13
Montali (1) 3:5	nonjudicial (1) 30:10	overturned (1) 24:21	PG&E (6) 3:5;6:22;9:2;12:13; 25:2;35:21	principles (1) 36:8
more (12) 5:1,8;18:21,21; 20:10;25:7;31:4; 32:19;34:12,17; 35:15,24	notable (1) 16:18	own (1) 8:12	phonetic (1) 10:12	privy (1) 14:14
morning (4) 3:7,16;4:6;16:7	November (1) 7:6	owned (1) 27:10	PICOs (1) 10:12	pro (8) 5:10,11;16:11;33:4, 13;34:8,13,24
most (1) 24:15	O	owners (1) 19:17	pitch (1) 9:6	probably (4) 10:20;18:4;20:8; 29:14
motion (2) 6:13;16:15	objection (2) 12:24;16:14	ownership (2) 26:24;27:3	place (4) 22:10,11,14;31:14	problem (7) 8:1;25:23;26:10; 35:25;36:10,17,21
motions (1) 12:10	objections (1) 13:1	P	plan (3) 15:7;17:15;18:15	procedural (4) 22:14;25:23;28:4; 36:11
move (1) 3:17	obvious (1) 21:22	page (1) 13:14	please (4) 3:8;6:10;18:25,25	procedurally (1) 28:3
much (10) 6:7;20:20;22:13; 24:3,12,23;25:4; 26:19;31:21;37:2	occurred (1) 21:14	pages (1) 13:9	point (6) 15:9;18:24;21:9;	procedure (6) 6:20;16:24;17:17; 21:23;22:10;31:9
	off (6) 4:8,19;6:18;8:12; 30:19;34:25	paid (19) 13:5,25;14:9;16:11;		procedures (16) 6:15;9:21;11:19,20, 23,25;12:22;17:10; 18:6;24:21;27:22; 31:10,11,14,19;32:25
	officer (10) 11:18,22;14:22; 25:14;31:15,16,18; 32:14;33:19,25			proceeded (1) 25:25
	once (2)			

proceedings (3) 12:5,6;37:7 proceeds (1) 33:2 process (6) 10:25;17:24;19:5; 27:24;30:10;33:3 processed (1) 29:18 processes (3) 17:13;19:6,8 processor (1) 17:12 product (1) 17:24 professional (1) 36:25 professionals (2) 17:12;34:4 progress (1) 29:2 promoted (1) 3:21 promulgated (1) 17:8 pronouncing (1) 7:19 proof (1) 6:19 properly (1) 29:18 property (32) 6:24;7:12,16;8:23; 9:3,8,12;13:8,11,12, 20;19:17,17,21,22,25; 20:1,5,6,14,20,21; 21:24;26:11,12,22,23; 27:10,16,17,18;30:23 proposal (1) 17:3 protect (1) 30:23 purposes (2) 28:2;32:4 pursue (1) 11:24	5:10,11;16:11;33:4, 13;34:8,14,24 rate (2) 5:10,11 rather (1) 4:8 read (3) 12:5;25:3;36:5 real (1) 8:23 really (4) 12:9;24:15;25:23; 26:18 reason (3) 13:3,23;14:7 reasonable (2) 16:3;17:13 reasons (2) 24:18;32:2 rebuttal (1) 6:5 recalculated (1) 34:1 recognize (1) 19:11 reconsider (1) 33:9 reconsideration (3) 9:11;10:1;31:18 reconsidered (1) 35:23 record (3) 14:15,17,18 recourse (1) 22:15 recovery (1) 30:8 reevaluate (4) 28:20,25;29:1,19 reference (3) 10:3;12:21;18:8 referenced (1) 8:18 referred (1) 19:8 referring (6) 11:23;13:11,13; 17:7;19:4;26:13 regard (1) 33:12 related (2) 7:12;19:22 relationship (1) 32:10 relatively (1) 31:7 released (2) 31:3,3 relevant (1) 16:8 relief (1) 11:18 rely (2)	7:20;36:8 remaining (2) 30:1;31:2 remains (1) 33:14 remedy (2) 32:1;35:9 remember (2) 19:12;30:20 rent (1) 21:7 rental (3) 7:2;8:6;27:3 rents (2) 7:5;9:8 repeat (1) 8:7 report (2) 5:13;25:2 represent (1) 6:25 representing (1) 4:17 request (2) 9:20;11:23 requested (1) 9:11 require (1) 30:12 requirement (3) 9:21;10:3;27:1 requires (2) 13:18;27:7 requiring (1) 9:21 reserve (1) 6:4 resolution (4) 6:20;17:10;18:6; 32:25 respect (1) 23:14 respond (3) 11:22;15:11;16:4 rest (1) 21:7 restate (1) 29:8 result (4) 10:2,4;16:10;17:13 resulted (1) 13:20 results (2) 31:10,12 reverse (1) 25:14 reversed (1) 33:19 review (5) 15:22;16:16,19; 30:10;33:16 revisit (6) 23:21;27:25;28:15;	29:22;33:7,19 revisited (2) 32:22;34:23 revisiting (1) 30:12 ridiculous (1) 14:10 right (33) 3:7,14,20;4:6,20; 5:14;7:21,22;9:14,16, 17;11:3;13:4;14:13; 16:9,16,18;21:14,20; 23:8;24:7,9,15,16,19; 25:7,10;26:5;31:11, 17;32:2;33:16;35:6 rights (1) 30:23 robe (1) 18:17 role (1) 10:14 roll (1) 28:23 Rudnick (1) 3:15 rule (4) 8:8;14:3,3;27:6 rules (6) 16:25;17:1;25:19, 20;27:22;28:8 ruling (2) 28:6;35:14 run (1) 35:3	second (3) 16:10;19:4;27:15 seek (1) 11:17 seemed (1) 10:17 seems (2) 27:4;29:10 sense (1) 21:25 September (1) 33:4 session (1) 3:4 set (2) 25:19;32:11 sets (1) 17:8 several (1) 17:8 Shall (2) 18:2,20 share (2) 16:12;33:5 shocking (1) 7:9 short (1) 25:1 show (1) 32:20 SIEGER-GRIMM (32) 3:11,13,14;5:5,8,15, 17,19,21;16:5,7;17:3, 6;18:3,23;19:2,20; 20:11,16,18;26:6,7,9; 27:12;28:9,17;29:7; 32:20;33:17,21;34:3; 37:4 signed (1) 31:2 similarly (1) 28:1 simple (3) 14:19;23:1;36:19 simply (5) 6:14;13:25;14:8; 25:3;36:9 single (3) 28:10;30:13;33:18 situated (1) 28:1 situation (5) 8:21;9:23;15:3; 16:22;18:22 six (1) 24:23 sixty-percent (2) 5:9;33:4 sixty-seven (3) 5:4;29:15;30:8 sixty-six (5) 5:4,11,12;33:7,10 skies (1)
Q			S	
questionnaire (1) 7:3 queue (1) 24:14 quite (3) 7:18;12:4;29:10			sale (1) 24:24 same (7) 10:2;18:24;19:16; 28:18;29:13;30:2; 31:16 SAN (1) 3:1 satisfied (2) 6:25;30:8 satisfies (1) 36:21 Sayegh (26) 4:17;13:24;16:8,11, 15,15,22;20:3,13; 21:6,12;23:4,13,19, 23;25:24;27:10;28:8; 29:17,17;30:25;31:8; 32:23;33:4;35:15; 36:21 saying (8) 9:10;10:21,21; 11:20;17:19;21:23; 35:7;36:10 screen (2) 3:13;7:14	
R				
raise (1) 11:21 raising (1) 33:12 rata (8)				

29:10 Skikos (1) 10:11 slid (1) 3:13 slippery (2) 30:11;32:6 slope (2) 30:12;32:6 small (1) 26:21 smiling (1) 35:2 solution (3) 10:22;22:24;36:15 somehow (1) 35:20 someone (1) 30:9 soon (1) 5:18 sorry (2) 7:19;11:5 sought (1) 21:6 sounds (2) 18:1,13 source (2) 18:21;27:11 specifics (1) 5:25 spoke (1) 19:3 spur (1) 33:8 staff (3) 12:9,15;18:18 stand (2) 11:4;36:24 standing (1) 10:16 start (3) 4:20;24:25;35:9 Starting (1) 12:25 state (3) 4:14,23;17:11 stated (2) 6:17;19:23 statement (5) 4:21,24;14:22;18:1,14 statistics (1) 23:7 statute (1) 8:21 stay (1) 4:8 step (2) 36:22,23 still (6) 3:10;12:7;15:14; 30:1;33:15,16	stock (1) 24:24 stop (2) 14:13;33:10 story (2) 20:9;31:6 straightened (1) 9:25 straightforward (2) 7:2;31:8 strangers (1) 10:16 stream (1) 21:13 stretch (1) 22:13 strict (1) 7:25 strictly (1) 19:23 strong (1) 36:7 structural (3) 14:2,9;21:8 structure (8) 7:1;13:5,25;14:4; 20:24;21:25;22:9,9 struggle (1) 30:6 struggling (2) 31:20;32:16 stuff (1) 12:20 submission (1) 36:18 submit (1) 21:8 Submitted (2) 7:4;36:24 subrogation (2) 20:9,12 suffered (4) 13:19;19:17,18; 20:4 suggest (2) 29:11,12 suggested (1) 32:12 suggesting (1) 32:9 suggestion (1) 26:8 suggestions (1) 30:16 suppose (1) 14:24 supposed (2) 22:1;23:25 sure (3) 4:2;18:23;35:23 surprise (1) 6:18 Susan (1)	3:14 system (1) 22:15 T talk (1) 8:17 talking (6) 9:25;18:24;23:5; 26:10;30:20;35:4 TCC (1) 11:2 team (2) 12:12,13 ten (3) 6:8;12:10;34:1 tenants (1) 26:22 term (1) 26:3 terminated (4) 9:18;21:10,11;22:5 terms (3) 10:13;17:10;36:8 theme (1) 35:3 there'd (1) 24:5 therefore (12) 12:1;13:6,7;14:1, 21,25;15:13,15,16; 27:23;29:19;31:19 there'll (1) 34:13 thin (1) 12:15 thinking (2) 24:22;34:21 third (1) 13:15 third-hand (1) 19:4 though (3) 9:7;12:9;36:2 thought (6) 7:2;10:23;11:20; 13:10,13;36:19 thousands (1) 30:7 three (5) 12:15;20:24;23:7, 12,20 throw (1) 34:25 thrown (1) 22:22 tie (1) 26:20 tied (2) 26:11;27:16 TOC (5) 10:11,12;11:1,5,9	today (2) 15:10;16:8 told (5) 11:14,24;14:11; 24:18;33:15 took (2) 12:3,19 traditional (1) 7:20 treat (1) 28:21 treated (1) 34:20 treating (2) 13:24;28:18 trial (1) 27:2 true (2) 31:20;35:19 trust (58) 4:24;6:15;7:8;8:4, 12:9;22,24;10:5,7,10, 18,23;11:10;13:4,6,8, 18,22,23;14:1;15:6,7, 21,21;17:1,9,12,14; 19:11,14,14,19,21,24; 20:8,9,12;21:7,23; 23:14,21;25:15; 27:17,17;28:7,10,21; 29:20;30:24;31:2; 32:5,20;33:3,7;34:3, 10;36:14,14 trustee (12) 3:15;5:10;16:14; 17:11;19:6;22:18; 23:25;24:2;27:25; 29:22;32:25;33:3 trustee's (6) 5:13;6:1;16:1;25:1; 30:6;36:2 trust's (3) 16:9,16;17:23 try (2) 18:24;19:10 TUESDAY (1) 3:1 turn (1) 4:7 turns (2) 32:9;34:1 twisted (1) 13:21 two (6) 16:8;23:24;29:24; 33:17;35:16;36:20 two-million- (1) 23:25 two-million-dollar (1) 29:25 types (2) 17:9;23:15	U under (14) 6:23;8:17;9:12,21; 13:11;21:16;23:22; 27:1;29:9;30:18,21, 23;32:25;36:18 undermine (1) 29:2 unfortunate (1) 15:24 unhappy (1) 29:14 unique (1) 28:12 universe (2) 25:2;35:22 unless (2) 4:7;27:4 unmute (1) 3:14 unravels (1) 28:23 unusual (1) 9:23 up (12) 3:25;4:4;5:4;7:13; 10:13;11:15;18:19; 23:20;25:19;30:2; 33:16;34:13 update (1) 6:2 uphold (1) 27:24 upon (3) 4:25;8:1;29:25 use (1) 31:11 used (4) 6:15;17:17;21:18; 35:5 using (1) 7:9 usually (2) 9:24;32:8 utility (2) 8:23;27:5 V vacate (1) 25:15 valuation (3) 17:13;19:8;27:3 value (2) 27:19,20 valued (1) 22:5 valuing (1) 27:18 variants (1) 34:5
---	--	---	--	--

variation (1) 9:4 various (2) 10:5;17:9 victim (7) 3:15;16:12,17; 28:11,12;29:3;35:22 victims (2) 22:20;29:13 victims' (1) 29:13 violated (1) 12:2 void (1) 15:15 voted (1) 25:21	work (3) 18:18;36:20,25 worked (1) 14:16 worse (2) 8:2;32:12 worth (2) 22:12;29:23 written (1) 6:8 wrong (14) 11:11,20;15:24; 20:23;21:9;22:9; 24:20;31:9,10,19,24, 25;32:1,5	25th (1) 5:11 27 (2) 12:25;14:5 28 (1) 14:5 29 (1) 14:6		
		3		
		31 (1) 5:14 3rd (1) 10:2		
	Y	7		
W	Yanni (3) 10:6,17;18:18 yarn (1) 28:23 year (2) 7:8;21:1 years (3) 14:15;22:11;29:15	70,000 (1) 29:13 71,803 (1) 28:10		
wait (5) 28:20,20,20,20; 33:23 waiting (2) 5:24;29:4 wall (1) 18:9 wants (1) 28:19 wasting (1) 11:12 way (11) 7:5;9:8;14:16; 15:19;19:10;22:16; 25:8;28:3,4;32:17; 35:25 wearing (2) 18:17,17 weekend (1) 5:22 weird (1) 27:4 what's (4) 4:2;24:14;25:3; 34:6 Whereupon (1) 37:7 whole (3) 17:24;19:4;28:18 wiggle (1) 34:22 wish (3) 3:23;35:19;36:13 within (1) 25:1 without (4) 16:20,24;34:15,16 word (2) 22:9,10 words (7) 14:21;15:14;16:25; 19:16;20:3;31:22; 32:14	Z Zink (1) 4:16 1 10,000 (1) 33:24 10:00 (1) 3:1 10:48 (1) 37:7 11 (1) 5:2 11.27 (1) 5:6 14th (1) 4:25 15th (1) 33:4 19.24 (2) 4:25;5:2 2 200,000 (3) 20:14,21;21:1 2020 (1) 7:6 2024 (1) 3:1 24th (1) 7:6 255 (2) 28:11,11	9 9 (1) 3:1		